

MEMORANDUM

To: Social Security Advisory Board
Subject: Background and Current Challenges Affecting SSA's
Representative Payee Program
Date: May 15, 2015

At the May Board meeting, executives from SSA's Office of Retirement and Disability Policy (ORDP) will discuss SSA's representative payee program. A representative payee is a person, or organization appointed by SSA to act as the receiver of benefits for a beneficiary who is under the age of 18 or otherwise considered not fully capable of managing their own benefits. The law sets forth SSA's responsibilities in appointing, monitoring, and reviewing representative payees as well as investigating allegations of misuse and removal procedures.¹

The SSA component in charge of setting agency policy is the Office of Retirement and Disability Policy (ORDP) headed by Virginia Reno. Executives from this component will discuss its current challenges in handling the workload, which advocacy groups and Congress have complained lacks adequate oversight. Specific criticism has targeted:

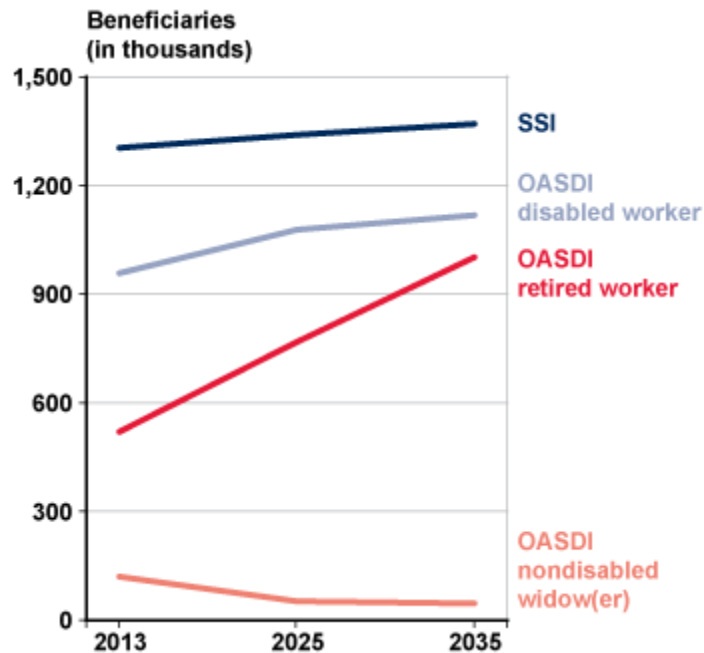
- SSA's antiquated data collection systems;
- its annual accounting process;
- its failure to ensure the appropriate representative payee is appointed;
- its lax approach to allegations of misuse, and
- the lack of information provided to beneficiaries on how to appeal the agency's determination that a payee is needed.

While SSA has been criticized for lackadaisical oversight, it has simultaneously had difficulty in finding individuals willing to become representative payees because the oversight and accounting requirements are often considered burdensome and intrusive.

Program Growth – The Coming Tsunami

The oversight and management of the representative payee program needs immediate attention. As illustrated in the following chart projections show major demographic changes occurring over the next two decades as the number of retired worker beneficiaries rise, particularly those in the 85+ category. This demographic trend forecasts a need for more representative payees.

¹ See 42 U.S. Code § 1007



Recent SSA research stated:

“We project that the number of program participants overall who need a payee will increase from 2.94 million in 2013 to 3.27 million by 2025... For OASDI beneficiaries, the group with the largest increase in the need of a representative payee by 2025 is retired workers. We project that the number of retired-worker beneficiaries with representative payees will increase from 519,780 to 768,474—a difference of 248,694 beneficiaries, or 47.8 percent...”²

Selection Process and Responsibilities of a Representative Payee

When determining the appropriate payee, SSA considers a number of variables, such as the payee application itself, relationship to and/or custody of the beneficiary, past representative payee performance (if applicable), and any criminal history.³ SSA gives preference to certain parties; for example, close family or friends are generally preferred to fee-based organizations.⁴

All representative payees, regardless of classification, are supposed to act strictly as the beneficiary’s *fiduciary*, ensuring the beneficiary’s day-to-day needs for food and shelter are met. Benefits may also be used for medical or dental care not covered by insurance and for personal needs, such as clothing and recreation. Any money left over after paying for these basic needs must be saved.

² Chris E. Anguelov, Gabriella Ravid, and Robert R. Weathers II, “Adult OASDI Beneficiaries and SSI Recipients Who Need Representative Payees: Projections for 2025 and 2035,” *Social Security Bulletin* Vol. 75 No. 2, 2015.

³ SSA Program Operations Manual System (POMS) GN 00502.132 *Selecting a Qualified Representative Payee (RP)*: <https://secure.ssa.gov/poms.nsf/lnx/0200502132>

⁴ SSA Program Operations Manual System (POMS) GN 00502.105, *Payee Preference Lists*: <https://secure.ssa.gov/poms.nsf/lnx/0200502105>

The majority of representative payees are family members; however, there are also fee for service organizations, smaller organizations (less than 50 representative payees), some non-profit organizations, states and individuals other than family. The following chart shows the breakdown. The majority of problem cases have arisen with the organizational representative payee and the non-family member. However, the annual accounting requirements are the same for all of the groups.

Recipients of Social Security (OASDI), Supplemental Security Income (SSI), or Both

Persons with representative payees, by payee type and benefit type, December 2013

Type of payee	Total	OASDI only	SSI only	Both OASDI and SSI
<i>Number</i>				
Total	8,735,903	5,372,458	2,526,588	836,857
Parent (natural, adoptive, step)	5,160,742	3,236,799	1,630,152	293,791
Spouse	278,301	223,954	38,926	15,421
Child (natural, adoptive, or stepchild)	342,356	226,072	76,827	39,457
Grandparent	265,483	145,523	104,740	15,220
Other relative	830,232	407,611	307,865	114,756
Nonmental institution	461,322	316,184	97,419	47,719
Mental institution	151,982	78,865	45,464	27,653
Financial organization	13,520	7,419	3,522	2,579
Social agency	230,567	99,952	81,399	49,216
Public official	31,143	15,516	10,115	5,512
Other	322,596	142,932	130,157	49,507
<i>Percent</i>				
Total	100.0	100.0	100.0	100.0
Parent (natural, adoptive, or stepparent)	59.1	60.2	64.5	35.1
Spouse	3.2	4.2	1.5	1.8
Child (natural, adoptive, or stepchild)	3.9	4.2	3.0	4.7
Grandparent	3.0	2.7	4.1	1.8
Other relative	9.5	7.6	12.2	13.7
Nonmental institution	5.3	5.9	3.9	5.7
Mental institution	1.7	1.5	1.8	3.3
Financial organization	0.2	0.1	0.1	0.3
Social agency	2.6	1.9	3.2	5.9
Public official	0.4	0.3	0.4	0.7
Other	3.7	2.7	5.2	5.9

SOURCES: Social Security Administration, Master Beneficiary Record and Supplemental Security Record, 100 percent data.

Media Reports on the Lack of Oversight

In the last decade SSA's representative payee program has come under scrutiny, primarily due to media reports exposing instances of misuse and criminal negligence by various individual and organizational payees around the country. The most notorious case, and the one, which has prompted a review of the entire program, and additional oversight requirements is Henry's Turkey Farm. The following is a lengthier description of the case, as it is important to note the failure was not SSA's alone. Every oversight and reviewing body failed to follow up on multiple reports of abuse.

Henry's Turkey Farm

Henry's Turkey Farm was an organizational payee and an employer to 30-60 men with intellectual disabilities. It opened its doors in the late sixties when Mr. Henry, a turkey insemination expert, partnered with T.H. Johnson a ranch owner. With the government's assent, and several contracts in states, Johnson began running a for-profit program that took young men from state institutions to train them in the agricultural process. Over the decades more than 1000 men were chosen for the program, one of which was located in Atalissa, Iowa. The men at Henry's Turkey Farm had been sent to work at Henry's turkey plant, but the plant wasn't just the men's employer, it was also the landlord, caregiver and representative payee for Social Security benefits.

The men were housed in a schoolhouse six miles from the turkey plant which was converted into a bunkhouse. While Henry's paid \$600 each month in rent for use of the tax-free bunkhouse, it charged a combined rent of as much as \$10,000 to the men.

The days started at 3:00 am when the men were driven to Henry's processing plant where stacks of turkey coops were trucked in. The 40 lbs. birds were grabbed from their cages swung upside down and hung on an overhead conveyer. The men killed, cleaned and (known as the least desired job) pulled out the turkey's windpipes. They averaged 20,000 turkeys a day. They worked the assembly line alongside men with no disabilities. However, their pay wasn't commensurate because of a 1938 law that allowed certified employers to pay workers with disabilities sub-minimum wages. After hundreds of dollars was deducted from their earnings and Social Security benefits to cover their room and board the men received about \$65.00 a month, which they spent a lot of at the Johnson family's roadside country store buying hamburgers, peanut brittle, and soda water.

(Note: \$65.00 is the allowable earnings amount under the Supplemental Security Income program. Earnings above \$65.00 would have resulted in an offset to the SSI benefit and eventually removal from the program. Henry's avoided this by reducing wages to earnings at about .41 an hour.)

Life inside the bunkhouse included punishments ranging from being sent to their rooms, or refusal of treats at a local market, to being denied bathroom breaks or being handcuffed to their beds. There were efforts to escape, one of which ended in a man freezing to death near the fenced in property line. There was no criminal investigation, just a note on the death certificate stating that the man had wandered away. There were some complaints; in 1979 an investigation by the Des Moines Register suggested that the men were being taken advantage of. A social worker at the state Department of Human Services complained that the schoolhouse's front door was padlocked – the padlock was removed but no further investigation was done. The U.S. Department of Labor cited Henry's Turkey Service for not properly compensating the men; the company promised to comply, but didn't. The state Department of Human Services received several complaints over the years, including similar allegations of abuse from a relative and a former worker. Nothing changed.

Long after Johnson had died and the caretakers were considering retirement, after over 30 years working on the assembly line, Henry's Turkey Service worked out a staggered separation with the processing plant for the remaining men living in the bunkhouse. They had been promised a retirement to a ranch in Texas – which didn't happen. Some were placed in nursing homes, which is when the sister of one of the men discovered that her brother had \$80.00 in savings after decades of working. She called the Iowa Department of Human Services and in 2009, a supervisor drove out to the bunkhouse and discovered 21 men living in the unheated structure. There were holes in the walls, the kitchen was infested with cockroaches, the mattresses were damp from ceiling leaks, one man thought he was suffering from hearing loss but it was actually because his ears had never been cleaned. Another man had dental wires protruding from his bleeding gums, there were missing fingernails, and forked hands from pulling out the turkey windpipes, and toenails that curved around toes and cut into the pads of feet. The Fire Marshall toured the building and declared that it was uninhabitable. The men were removed and have since been placed in nursing homes, group homes or with family members.

Along with numerous fines for federal and state law violations, an attorney at the U.S. Equal Employment Opportunity Commission (EEOC) brought action against Henry's Turkey Farm for emotional distress. After hearing what the men endured for decades, the jury awarded \$240 million dollars to 32 men. As there is a limit on awards against small organizational payees the award was reduced to the 1.6 million dollar cap. To date no money has been recovered or paid to the men.

The case did prompt media attention and since Henry's Turkey Farm case the number of reviews at the agency has increased. However, this increased oversight did not uncover the four malnourished adults found locked in a boiler room in a Philadelphia apartment building. In this case, investigations revealed that the representative payee, Linda Weston, had also been the representative payee for several other individuals, and had successfully collected about \$212,000 in Social Security payments over a ten-year timeframe. The victims, two of whom died when

under her care, were often drugged, and deprived of food and medical care. Weston avoided notice by moving from Texas to Florida, then Virginia and finally Pennsylvania. Under SSA's own policy, she never should have been appointed as she was on parole for locking a man in a closet and starving him to death, but SSA's Prisoner Update System only went back eight years and did not flag that she was a convicted murderer.

In 2014 a class action case was filed against SSA when misfeasance of funds by a large organizational payee was discovered in Oregon. The organization was shut down but when SSA did not have a alternate representative payee to pay it stopped paying the beneficiaries altogether. The action was settled when an alternative payee was found.

SSA Challenges

At the November 2014 board meeting, Assistant Deputy Commissioner for the Office of Retirement and Disability Policy Marianna LaCanfora, described some of the challenges associated with the representative payee review process. Representative payees must submit an accounting form annually, which is essentially a financial statement reporting what was spent on the beneficiary over the year; the self-reporting allows a payee to report whatever he or she wants and has never resulted in a finding of misuse. At the same time, the method is labor intensive for SSA, requiring about 600 employees per year to mail out and process the forms. SSA has tried to halt this requirement legislatively, but Congress has determined that such forms are the only direct contact SSA has with all representative payees.

In addition to the accounting form, SSA conducts 1) mandatory periodic reviews⁵ and 2) discretionary site reviews that are based on a predictive model developed by the Office of Quality Improvement (OQI). The model is intended to detect cases that contain a high likelihood of benefit misuse, but Ms. LaCanfora stated that such models are unsophisticated and that the sample sizes of cases with likely misuse are not statistically significant. Further, SSA cannot follow up and review many payees due to being understaffed and underfunded. In FY 2014, 2,377 representative payees were reviewed, 613 of which were organizational payees chosen based on the predictive model.⁶ To put this number in perspective, last year there were approximately 6 million total representative payees registered with SSA.

⁵ Specifically, the Social Security Act requires SSA to review individual payees serving 15 or more beneficiaries, organizational payees serving 50 or more beneficiaries, Fee-for-Service (FFS) payees, and State mental hospitals who participate in SSA's on-site review program.

⁶ SSA, *FY 2014 Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews*, January 27, 2015.

Lack of Collaboration with Other Agencies

While SSA has traditionally been in charge of oversight responsibilities, beginning in FY 2010, the agency contracted with the National Disability Rights Network (NDRN)⁷ to have its Protection and Advocacy (P&A) organizations conduct onsite reviews of organizational payees that represent fewer than 50 beneficiaries or individual payees who represent fewer than 15 beneficiaries. If the P&As detect a problem with the payee, they refer the payee to SSA for follow-up or further investigation.

In a 2012 report⁸ on the progress of the first two years of the review project, the NDRN made several policy recommendations, such as using the P&A system to provide formal training to payees, authorizing the representative payee review project in federal statute, and using the P&A network to conduct monitoring reviews of other disability programs. Further research would be required to assess the feasibility and usefulness of each recommendation, but this raises an important question: should the responsibility of representative payee oversight belong solely to SSA?

Many other organizations (including the Advisory Board in a 2010 Issue Brief⁹), have recommended improved collaboration for payee oversight with other federal, state, or non-governmental agencies. As the SSAB issue brief noted, “the population of representative payees overlaps with populations that are monitored by other agencies, but there is little coordination of oversight, or sharing of information.”¹⁰ A recent Government Accountability Office (GAO) report recommended that SSA develop relationships and enhance coordination with organizations such as: Adult Protective Service agencies, state courts, state protection and advocacy agencies, Area Agencies on Aging, Aging and Disability Resource Centers, and state foster care agencies.¹¹ Many of these same agencies were also suggested in the SSAB issue brief.

The ultimate goal of the improved collaboration would be to establish methods in which agencies can inform one another of problematic or potentially problematic rep payees. Further, it has the potential to provide relief to the workload and resource pressures facing SSA.

⁷ The P&A system is a federally funded entity that provides legal advocacy services to individuals with disabilities across the 50 U.S. states and its territories. NDRN is the nonprofit membership organization for the P&A Systems and the Client Assistance Programs (CAP) for individuals with disabilities.

⁸ National Disability Rights Network, *Providing Payee Oversight: A Report on the First Two Years of the Social Security Administration Representative Payee Review Project*, June 2012.

⁹ SSAB, “Disability Programs in the 21st Century: The Representative Payee Program,” *SSAB Issue Brief Series* Vol. 2 No. 1, September 2010.

¹⁰ *Ibid.*, page 9

¹¹ GAO, *SSA Representative Payee Program: Addressing Long-Term Challenges Requires a More Strategic Approach*, May 2013, page 16.

Representative Payee System Modernization

Like other SSA programs, the current IT infrastructure for the representative payee program lacks integration with other systems – another consequence of a piecemeal approach to systems planning and development at the agency. Information entered into a Title II/Title XVI payment system, for example, might not propagate seamlessly to the representative payee system.

One specific weakness on the systems front relates to the accounting forms – SSA has no method for evaluating and validating the information it receives on these annual forms. A 2007 National Research Council (NRC) study on representative payees concluded, “the data on the accounting form are not retrievable for statistical analyses and therefore, empirically-based policies and regulations cannot be formulated.”¹² The NRC recommended that SSA store data from the accounting forms in an electronic database suitable for analysis.

In October 2011, in response to the Linda Weston case in Philadelphia, the agency seemed to be making some progress when it created the electronic representative payee system (eRPS), which allows users to record misuse allegations, track them to final disposition, and guide SSA staff through the review process. SSA intended for the interface to help identify other beneficiaries served by a problematic payee and provide the misuse history if the payee applied to serve another beneficiary going forward. However, the efforts to interface the eRPS and other agency systems appears to have stalled. At a June 2014 Board meeting in Seattle, SSA employees expressed general frustration with the eRPS. There was serious concern among staff that eRPS was underdeveloped. Some claimed that the system was cumbersome and complicated to use and that the web-based systems are not in sync with one another. Because of these flaws, SSA employees noted having to manually input information, which can be quite time-consuming and makes data matching much harder.

¹² National Research Council. *Improving the Social Security Representative Payee Program: Serving Beneficiaries and Minimizing Misuse*. Committee on Social Security Representative Payees, Division of Behavioral and Social Sciences and Education. Washington: The National Academies Press, 2007.